Goods and Services Tax (GST) on the Sale or Transfer of Farmland

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Factsheet

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This Factsheet is intended to provide general information about the GST on the sale or transfer of farmland. The information contained in this Factsheet should therefore not be considered as either legal or accounting advice nor should it be considered as a complete coverage of the *Excise Tax Act* or the various laws affecting the sale or transfer of farmland within Ontario. Further, the Government of Ontario assumes no liability or responsibility for the accuracy of any information within this Factsheet or for any persons following the information contained herein. In fact, the Government of Ontario encourages all readers of this Factsheet to discuss all sales or transfers of farmland with the reader's accountant and/or lawyer before they are undertaken.

Harmonized Sales Tax

Ontario has introduced the harmonized sale tax (HST), to be effective July 1, 2010. It is anticipated that the rules noted in this bulletin will continue to apply under the HST.

INTRODUCTION

As a general rule, the sale of farmland is taxable unless an exemption applies. Where an exemption is not allowed, the buyer and seller may elect to not have the GST apply if certain conditions are met.

The Canada Revenue Agency (CRA) generally considers "farmland" to mean land that is regularly used by a person for the purpose of gaining or producing income from a farming business carried on by the person. It may also include vacant land (e.g., a bush area) that may not be used directly in a farming business along with any buildings that form part of the farmland.[1]

GST EXEMPTIONS

The GST will not be applied on the sale of farmland if it fits into one of the following exemptions:

Sale or Transfer to a Related Person or Former Spouse or Common Law Partner – where individuals acquire farmland from a relative for their individual use and enjoyment. The farmland must have been used in the business of farming at any time prior to the transfer. In addition, the farmland may not have been used in any other commercial activity immediately before the transfer.[2]

This may include:

- a sale by an individual farmer to a related individual or former spouse or common-law partner
- a conversion of farmland from the business of farming to personal use by the owner[3]

Sale by a Partnership, Trust or Corporation to a Partner, Beneficiary, Shareholder or Related Person, for their personal use and enjoyment, where immediately before the transfer, all or substantially all (this generally means 90% or more) of the property of the partnership, trust or corporation is used in the business of farming, and the partner, beneficiary, shareholder or spouse or child of that individual is actively engaged in the business of the partnership, trust or corporation.[4]

Sale or Transfer of Personal Use Property by an Individual or a Trust[5] – The exemption applies where farmland that has not been used primarily in a farming business is sold or transferred. The exemption is not available to land held by corporations or partnerships. In addition, it is not available where the property has been previously subdivided or severed into more than two parts, unless these subdivided or severed portions were sold to a related person, former spouse or common-law partner for their personal use and enjoyment.

Ministry of Agriculture, Food and Rural Affairs

Ontario

GST ELECTIONS

Sale of an Ongoing Business – where a farmer sells farmland as part of a sale of an ongoing farming business, the farmer and purchaser may, jointly, elect to have no GST payable on the sale, by completing form GST44[6]. The purchaser of the farmland must acquire possession or use of all or substantially all (generally means 90% or more) of the property required to carry on the business or part of the business being purchased. This election is not available where the seller is registered for the GST and the purchaser is not.

Estates – the estate of a deceased individual and the beneficiary may jointly elect to have no GST payable where:

- immediately before death, the deceased used the farmland in a business
- the estate is transferring the business assets in accordance with the individual's will or the laws relating to the succession of property on death, to a beneficiary of the estate and a GST registrant
- the farmland is used in a business by the beneficiary[7]

TAXABLE FARMLAND SALES AND COLLECTION OF GST

Unless the farmland is eligible for one of the exemptions or elections outlined above, the sale of farmland used primarily in a farming business will be taxable. However, the collection of the GST can vary, depending on the circumstances. Two scenarios are outlined below.

Selling Farmland to a Person Who Is Registered for the GST

If the purchaser of the farmland is registered for the GST, the seller is not required to collect the GST generated by the sale. The buyer reports the GST payable and claims an offsetting input tax credit in their first GST return after the sale. Buyers who are using 90% or more of the farmland in a farming business would be able to claim a full input tax credit. In this circumstance, it would be prudent for the seller to confirm the registration status of the purchaser at the time of the sale.

Selling Farmland to a Person Who Is Not Registered for the GST

If the purchaser of the farmland is not registered for the GST, the seller is required to collect the GST generated by the sale and remit it to the Canada Revenue Agency. If farmland will be used in a farming business, the purchaser can register for the GST and claim an input tax credit in order to recover the GST paid on the purchase of the farmland. Normally, Canada Revenue Agency will backdate a registration for up to 30 days.

Houses on Farm

Where a sale of farmland includes a residence or house, that sale is viewed as two separate sales:

- the portion that includes the house plus the land that is necessary for the use and enjoyment of the house, and
- the remaining portion of land

Sales of used houses are generally exempt from GST.[8]

REFERENCES

GST/HST Info Sheet – Sales of Farmland by Individuals. Canada Revenue Agency. August 2004. Available at: www.cra-arc.gc.ca/E/pub/gi/gi-002/gi-002-e.pdf

General Information for GST/HST Registrants, RC4022 (E) Rev. 08. Canada Revenue Agency. Available at www.cra-rc.gc.ca/E/pub/gp/rc4022/

ENDNOTES

1. GST/HST Info Sheet – Sales of Farmland by Individuals, Canada Revenue Agency, August 2004.
2. Section 10, Part I, Schedule V, *Excise Tax Act*.
3. Section 11, Part I, Schedule V, *Excise Tax Act*.
4. Section 12, Part I, Schedule V, *Excise Tax Act*.
5. Section 9, Part I, Schedule V, *Excise Tax Act*.
6. GST44 – Election Concerning the Acquisition of a Business or Part of a Business, Canada Revenue Agency.
7. Subsection 167(2), *Excise Tax Act*.
8. There are circumstances when the sale of a used house may be taxable. For additional information on sales of used houses, see the Canada Revenue Agency GST/HST Info Sheet, *Sales by Individuals of Owner-Occupied Homes*, and GST/HST Memorandum 19.2.1, *Residential Real Property – Sales*.

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